BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

STEVE DARNELL	)	
Claimant	)	
	)	
VS.	)	
	)	
WYCHE ENTERPRISES INC.	)	Docket No. 259,009
Respondent	)	
	)	
AND	)	
	)	
HARTFORD ACCIDENT INDEMNITY	)	
Insurance Carrier	)	

ORDER

Respondent requested review of the May 14, 2002 Award of Administrative Law Judge (ALJ) Jon L. Frobish. The Board heard oral argument on November 20, 2002.

APPEARANCES

Pamela G. Phalen of Pittsburg, Kansas appeared for the claimant. Richard J. Liby of Wichita, Kansas, appeared for the respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award dated May 14, 2002.

ISSUES

Although the parties have framed the issue for determination as "the nature and extent of claimant's impairment", it is, more aptly, whether claimant's present eye impairment was caused by the accident that occurred on January 28, 2000, while in respondent's employ.

The ALJ concluded Dr. Michael P. Varenhorst provided "a rational and logical explanation" for how claimant's accident caused his partial loss of vision and awarded claimant an 85.5 percent permanent impairment to his left eye.[1] Respondent appealed

[1] Award at 3.

alleging the claimant's accidental injury could not, based upon the reliable, credible medical testimony, have led to his resulting vision loss.

Claimant maintains Dr. Varenhorst's explanation of the causative aspects of claimant's eye injury was sufficient to satisfy his burden of proof and the ALJ's Award should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board finds as follows:

The ALJ succinctly and accurately stated the facts surrounding the accident:

> The facts of this matter are not in dispute. The Claimant is a 55 year-old who was employed by the Respondent to do electrical work. On January 28, 2000, the Claimant was performing work busting flourescent [sic] lights apart, which were hung from the ceiling in a Wal-Mart store. The Claimant was utilizing a hammer and a screwdriver to break loose a rivet when the head of the rivet ricocheted off hitting the Claimant in his left eye. Two to three days later, the Claimant began noticing problems with his vision and sought medical treatment. The Claimant first went to an optometrist who referred the Claimant to an opthamologist, Dr. Beim. The Claimant then went to a veteran's hospital in Muskogee, Oklahoma. The Claimant has been unable to return to work.[2]

Immediately following his accident, claimant looked at his eye in the mirror. He saw that his eye was slightly red but he experienced no bleeding. He continued working that day with no apparent difficulty. Several days later he noticed his vision was somewhat out of focus and later, when he closed his right eye, he found he had lost some of the vision in his left eye. Claimant went to the eye doctor then located in the Wal-Mart store on February 8, 2000. Dr. Jonathan Wong referred claimant to Dr. Steven A. Beim, a board certified ophthalmologist.

Dr. Beim saw claimant on February 11, 2000. During this examination, Dr. Beim saw no indication of an abrasion or recent trauma to claimant's eye. But he was able to diagnose the source of claimant's loss of vision. He observed a complete blockage in the retinal artery and quickly concluded claimant was suffering from a branch retinal arterial occlusion (BRAO). This is a condition that can be quite serious if not life threatening. Dr. Beim strongly recommended claimant have further diagnostic follow-up and even suggested an ultrasound study of the carotid artery to look for plaque that might pose a

[2] Id. at 2.

danger of embolizing.[3] Although claimant sought treatment from a veteran's hospital, this was apparently never done.

There is no dispute about the diagnosis relating to claimant's condition following his accident. The difficulty arises in the causative aspects of that condition. A BRAO is "a condition where one of the arteries in the retina occludes for one reason or another and causes death of tissue, death of the inner part of the retina. And if that part of the retina incorporates central vision, then it causes significant visual loss in the patient."[4]

According to Dr. Beim, the blockage is typically caused by an embolus, which can arise from any part of the body between the heart and, in this case, the eye. These emboli come from atherosclerotic plaques in the inside vascular walls. The material will typically break off from a larger vein and the smaller pieces flow with the bloodstream and lodge in small vessels.[5] Dr. Beim indicates "[t]hat's typically how the arteries in the retina become occluded."[6]

Dr. Beim also testified that massive trauma to the eye, which results in a perforation of the eye can cause a vascular event. However, he has never seen or heard of a minor trauma causing a retinal artery occlusion. He went on to testify that the embolism that lodged in the artery of the claimant's eye most likely originated elsewhere in his body.[7]

With respect to claimant's accident, Dr. Beim testified he would have expected the onset of symptoms to have occurred within hours of when the vessel became blocked, because that would represent the blood supply being shut off from the retina.[8] In his practice, Dr. Beim sees on average one case of BRAO each month and mostly in those who are older than 60. Dr. Beim did not believe that something striking the front of the eye, such as a rivet, could cause a blood clot at the back of the eye.[9] More to the point, he did not believe that the accident while working for respondent could have caused claimant's BRAO.

Claimant was also evaluated by Dr. Jeffrey M. Brick, another ophthalmologist on April 17, 2000. In his initial report to claimant's attorney, Dr. Brick indicated he did not

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[3] Beim Depo. (Feb. 21, 2002) at 62-63.

[4] Beim Depo. (Feb. 20, 2002) at 9.

[5] Id. at 9-10.

[6] Id. at 9-10.

[7] Id. at 10.

[8] Id. at 13.

[9] Id. at 42.

believe claimant's BRAO was caused by the work-related event. Specifically, he indicated that claimant "probably did have BRAO. . . on his left, meaning left eye, by appearance of his vessels - blunt trauma may have been involved but hard to say how."[10] Dr. Brick based this opinion on the fact that in his 28 years of practice he had never seen a BRAO that resulted from a blunt trauma nor a BRAO in one so young and apparently without the normal risk factors. In most instances, a BRAO develops in association with bad vessels or some sort of thrombotic phenomena, when an embolus or plaque is dislodged from somewhere else in the body and travels through the arteries and becomes lodged in an artery.

Following this evaluation and the initial report, claimant's attorney forwarded some literature he had gathered and asked Dr. Brick to review it and consider whether his opinions would change. The doctor admits he understood that claimant's counsel was looking for a different opinion from him. Dr. Brick considered these materials and essentially equivocated with regard to causation. He testified it was possible that mild blunt trauma could have caused claimant's BRAO.[11] When taken as a whole, Dr. Brick merely acknowledged that the literature exposed him to the possibility that blunt trauma could have led to claimant's BRAO but in the end, he was unable to give a definitive opinion to that effect. The best he could say was that he was 50 percent, and perhaps only 20 percent confident that the injury caused claimant's retinal artery occlusion.[12]

Another physician, Dr. Rolfe A. Becker, weighed in on the causation issue and opined that claimant's vision problem was the result of a BRAO due to trauma. Dr. Becker, however, did not really offer any explanation as to the basis for his opinion although he did perform his own examination and had the benefit of claimant's prior medical records and the medical literature provided by his counsel. He also testified that based upon his years of experience, it is rare for trauma to cause this condition.

Claimant was evaluated by yet another physician, Dr. Michael P. Varenhorst. Dr. Varenhorst is a board certified ophthalmologist who specializes in diseases and surgery of the retina. He examined claimant on February 11, 2002. Dr. Varenhorst confirmed the BRAO but unlike the other testifying physicians, he also diagnosed optic atrophy and concluded both were "all part of the same event."[13]

Dr. Varenhorst's theory of how this accident led to the BRAO was radically different from the other physicians. According to Dr. Varenhorst, arteries provide the mechanism to send the blood from the heart while veins send the blood back. The situs of this

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[10] Brick Depo., Ex. 1.

[11] Id. at 44.

[12] Id. at 45-46.

[13] Varenhorst Depo. at. 9.

occlusion was in an artery that led from the heart to the back of the eye. Any trauma on the exterior or front part of the eye, as here, is not within the path which the embolus could have followed. For that reason, Dr. Varenhorst believes trauma does not explain this embolic occlusion.[14] He does, however, have his own theory. Simply put, the rivet caused a blunt trauma to claimant's eye which caused his optic nerve to swell. The swelling caused the branch arterial occlusion, which shut off the blood flow to the retina and caused the optic nerve atrophy. The record reflects some of the difficulties with this theory.

First, Dr. Varenhorst confirms that in order for this theory to be valid, there must be swelling in the optic nerve. Yet, there is nothing within Dr. Beim's records that indicates any such swelling was present. Obviously this would have been the sort of observation a competent ophthalmologist would make during the course of an examination, particularly when the reason for the examination was a recent blunt trauma to the eye followed by vision problems. For this reason, it seems Dr. Varenhorst's theory is suspect.

Second and more importantly, Dr. Varenhorst testified that his theory necessarily requires a "good injury."[15] After some discussion, it was clear that Dr. Varenhorst meant a mechanism of injury that involved a torque sufficient to damage the sinuous cord of the optical nerve fiber in the back of the eye. An example of such torque would occur during the course of a motor vehicle accident when the head strikes the windshield and is forced back, dramatically and quickly changing the direction and speed of the head and eyes. Yet, Dr. Varenhorst admits that there is no indication that claimant's head was torqued or turned at all during this accident. The rivet hit claimant in his open eye. He sustained no laceration, there was no bleeding and based on the evidence in the record, he was able to continue on with his work with little or no complications over the next week. At no time during the course of this claim did claimant describe his injury in a manner consistent with that advanced by Dr. Varenhorst.

After considering the record as a whole, the Board is not persuaded the greater weight of the evidence supports the ALJ's conclusions. Dr. Varenhorst's scenario about the mechanism of injury is inconsistent with the facts. No one disputes that this was a minor trauma to the eye. There was no laceration, no blood, nothing that required immediate attention. There was no torquing described during any of the medical examinations nor does claimant describe any such maneuver. Indeed, the first time the concept of torque was mentioned came in Dr. Varenhorst's deposition. For this reason, the Board finds his testimony unpersuasive.

The balance of the medical testimony fails to establish that it is more likely than not that the trauma of January 28, 2000, caused claimant's BRAO and resulting vision loss. Dr. Beim was the first board certified ophthalmologist to see claimant after his accident.

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[14] Id. at 38-39.

[15] Id. at 42-43.

He was in the best possible position to see the damage that might have occurred. Dr. Beim was deposed at length about the typical causes of BRAO and whether trauma could have played any part in claimant's condition. Dr. Beim clearly testified that he did not believe claimant's BRAO was trauma induced.

While claimant offered the testimony of Drs. Brick and Becker, their testimony is less than definitive. Dr. Brick never expressly testified that the trauma of January 28, 2000, caused claimant's BRAO. At best, after being asked to reconsider his opinion and requested to review literature gathered by claimant's counsel, he said it was possible. Dr. Becker was more definitive about his opinion on causation but he failed to explain the basis of that opinion.

Claimant bears the burden of proving his entitlement to benefits by a preponderance of the credible evidence.[16] After considering all of the evidence contained within the record, the Board is not persuaded claimant met his burden of proof. At best, claimant's evidence advances two possible theories neither of which are supported by the facts and credible medical testimony. Admittedly, there is a temporal relationship between the accident and the onset of symptoms a few days later, but the facts and the medical testimony do not definitively link the two as required by the Act. Accordingly, the ALJ's Award is hereby reversed and claimant's claim against respondent is denied.

AWARD

WHEREFORE, it is the finding of the Board that the Award entered by Administrative Law Judge Jon L. Frobish dated May 14, 2002 is hereby reversed and claimant is denied any recovery under the Kansas Workers Compensation Act.

IT IS SO ORDERED.

Dated this ____ day of September 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

[16] See K.S.A. 44-501 and K.S.A. 44-508(g).

DISSENT

Based upon the claimant's testimony and the expert medical causation opinions of Drs. Becker and Varenhorst, claimant has met his burden of proving that his branch retinal arterial occlusion was directly traceable to the January 8, 2000 accident. Accordingly, we would affirm the ALJ's Award.

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BOARD MEMBER

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BOARD MEMBER

c: William Phalen, Attorney for Claimant
Richard J. Liby, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director